

AMENDED IN ASSEMBLY JANUARY 4, 2012

AMENDED IN ASSEMBLY APRIL 27, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 519

Introduced by Assembly Member Roger Hernández

February 15, 2011

An act to ~~amend Section 32282 of, and to add Article 5.2~~ (commencing with Section 49005) to Chapter 6 of Part 27 of Division 4 of Title 2 of, the Education Code, relating to pupil discipline.

LEGISLATIVE COUNSEL'S DIGEST

AB 519, as amended, Roger Hernández. Pupil discipline: restraint and seclusion.

Existing law prohibits a person employed by or engaged in a public school to inflict, or cause to be inflicted, corporal punishment upon a pupil.

~~This bill would prohibit an educational provider from using chemical restraint, as defined, mechanical restraint, as defined, physical restraint, as defined, or seclusion, as defined, for the purpose of coercion, discipline, convenience, or retaliation by staff. The bill would limit the use of physical restraint, and would specify conditions under which an educational provider would be authorized to use physical restraint. The bill would allow, until January 1, 2014, nonpublic, nonsectarian schools, and certain district-designated alternative programs, to use seclusion if specified conditions are met.~~

~~The bill would also authorize the State Department of Education to use federal funds to provide professional and education support staff who work with pupils with exceptional needs and pupils receiving~~

~~special education services professionally recognized or accepted training in evidence-based emergency interventions.~~

~~Existing law requires a schoolsite council to write and develop a comprehensive school safety plan, except in the case of a small school district, as defined, that develops a districtwide comprehensive school safety plan that is applicable to each schoolsite in the school district. The comprehensive school safety plan is required to include the rules and procedures on school discipline.~~

~~This bill would authorize the comprehensive school safety plan also to include the rules and procedures regarding the use of restraint and seclusion.~~

This bill would authorize an educational provider, as defined, to use physical or mechanical restraint or seclusion, as defined, if specified conditions are met. The bill would require a seclusion room utilized by an educational provider to fulfill specified safety requirements. The bill would prohibit an educational provider from depriving a pupil of sleep, food, hydration, or access to bathroom facilities and from utilizing specified restraint and seclusion techniques, including, but not limited to, using chemical restraint, as defined, using an improvised mechanical restraint device, and using physical or mechanical restraint techniques that restrict breathing. The bill would require the State Department of Education to establish a mandatory system of data collection regarding the use of physical and mechanical restraint and seclusion that is consistent, timely, and publicly accessible. The bill would require an educational provider to annually report the data required to be collected to the department and would require the reported data to include the name of the educational provider and other specified information. To the extent that the data collection and reporting requirements would impose new duties on local educational agencies not required by federal law, the bill would impose a state-mandated local program.

The bill would state the intent of the Legislature that the data collection and reporting requirements be conducted in compliance with specified federal law, and impose no new duties or higher level of service on local educational agencies.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~no~~-yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Article 5.2 (commencing with Section 49005) is*
2 *added to Chapter 6 of Part 27 of Division 4 of Title 2 of the*
3 *Education Code, to read:*

4
5 *Article 5.2. Restraint and Seclusion*
6

7 49005. *The following definitions apply to this article:*

8 (a) *“Chemical restraint” means the administration of a drug*
9 *or medication to manage a pupil’s behavior or restrict a pupil’s*
10 *freedom of movement that is not a standard treatment and dosage*
11 *for the pupil’s medical or psychiatric condition.*

12 (b) *“Department” means the State Department of Education.*

13 (c) (1) *“Educational provider” means an entity or a person*
14 *that does both of the following:*

15 (A) *Receives support in any form from a program supported in*
16 *whole or in part with funds appropriated by the department.*

17 (B) *Provides educational or related services, support, or other*
18 *assistance to individuals in a public or private elementary or*
19 *secondary school.*

20 (2) *Educational provider includes all local educational agencies,*
21 *including charter schools, the California School for the Deaf, the*
22 *California School for the Blind, nonpublic schools, and nonpublic*
23 *agencies, including both in-state and out-of-state nonpublic schools*
24 *and nonpublic agencies.*

25 (d) *“IDEA pupil” means a pupil identified as a child with a*
26 *disability, as that phrase is defined in Section 1401(3)(A) of Title*
27 *20 of the United States Code.*

28 (e) *“Mechanical restraint” means the use of a device or*
29 *equipment to restrict a pupil’s freedom of movement. “Mechanical*
30 *restraint” does not include the use of devices or equipment by*
31 *trained school personnel, or by a pupil who has been prescribed*

1 *use of the device or equipment by an appropriate medical or*
2 *related services professional, if the device or equipment is used*
3 *for the specific and approved purpose for which the device or*
4 *equipment was designed, which shall include, but not be limited*
5 *to, all of the following:*

6 *(1) Adaptive devices or mechanical supports used to achieve*
7 *proper body position, balance, or alignment to allow greater*
8 *freedom of mobility than would be possible without the use of such*
9 *devices or mechanical supports.*

10 *(2) Vehicle safety restraints when used as intended during the*
11 *transport of a pupil in a moving vehicle.*

12 *(3) Restraints for medical immobilization.*

13 *(4) Orthopedically prescribed devices that permit a pupil to*
14 *participate in activities without risk of harm.*

15 *(f) “Nondisabled pupil” means a pupil who is neither an IDEA*
16 *pupil nor a Section 504 pupil.*

17 *(g) “Physical restraint” means a personal restriction that*
18 *immobilizes or reduces the ability of a pupil to move his or her*
19 *torso, arms, legs, or head freely. “Physical restraint” does not*
20 *include a physical escort, which means a temporary touching or*
21 *holding of the hand, wrist, arm, shoulder, or back for the purpose*
22 *of inducing a pupil who is acting out to walk to a safe location.*

23 *(h) “Seclusion” means the involuntary confinement of a pupil*
24 *alone in a room or area from which the pupil is physically*
25 *prevented from leaving. “Seclusion” does not include a timeout,*
26 *which is a behavior management technique that is part of an*
27 *approved program, that involves the monitored separation of the*
28 *pupil in a nonlocked setting, and is implemented for the purpose*
29 *of calming.*

30 *(i) “Section 504 pupil” means a pupil who only receives services*
31 *or accommodations guaranteed under Section 504 of the federal*
32 *Rehabilitation Act of 1973 (29 U.S.C. Sec. 794).*

33 *49006. (a) An educational provider may use physical or*
34 *mechanical restraint or seclusion if all of the following conditions*
35 *are met:*

36 *(1) To prevent imminent serious physical harm to the pupil, a*
37 *staff member of the educational provider, or others.*

38 *(2) After the educational provider, or its staff, has determined*
39 *that less restrictive alternatives and positive behavioral supports*
40 *are ineffective.*

1 (3) *The physical or mechanical restraint or seclusion ends*
2 *immediately upon cessation of the situation described in paragraph*
3 *(1) or (2).*

4 (b) *A seclusion room utilized by an educational provider shall*
5 *comply with both of the following requirements:*

6 (1) *Fulfill a fire clearance from the local fire authority.*

7 (2) *Be safe and free of hazards, including, but not limited to,*
8 *objects or fixtures that can be broken or used by a pupil to inflict*
9 *injury.*

10 49007. *An educational provider shall not do any of the*
11 *following:*

12 (a) *Use chemical restraint.*

13 (b) *Use physical or mechanical restraint or seclusion for the*
14 *purpose of coercion, discipline, convenience, or retaliation by staff*
15 *of the educational provider.*

16 (c) *Use physical or mechanical restraint techniques that restrict*
17 *breathing, including, but not limited to, using a pillow, blanket,*
18 *or other item to cover a pupil's face.*

19 (d) *Use an improvised mechanical restraint device such as a*
20 *sheet or belt.*

21 (e) *Use seclusion unless a staff member of the educational*
22 *provider, who is free from other responsibilities at the time,*
23 *maintains direct visual observation of the pupil at all times.*

24 (f) *Deprive a pupil of sleep, food, hydration, or access to*
25 *bathroom facilities.*

26 49008. (a) *The department shall establish a mandatory system*
27 *of data collection regarding the use of physical and mechanical*
28 *restraint and seclusion that is consistent, timely, and publicly*
29 *accessible.*

30 (b) *An educational provider shall annually report all data*
31 *collected pursuant to subdivision (a) to the department. The data*
32 *reported shall include the name of the educational provider and*
33 *all of the following information from the previous academic year:*

34 (1) *The number of IDEA pupils subjected to physical restraint,*
35 *mechanical restraint, or seclusion, with a separate number*
36 *provided for each type of restraint and seclusion.*

37 (2) *The number of Section 504 pupils subjected to physical*
38 *restraint, mechanical restraint, or seclusion, with a separate*
39 *number provided for each type of restraint and seclusion.*

1 (3) *The number of nondisabled pupils subjected to physical*
2 *restraint, mechanical restraint, or seclusion, with a separate*
3 *number provided for each type of restraint and seclusion.*

4 (4) *The race or ethnicity and sex of IDEA pupils subjected to*
5 *physical restraint, mechanical restraint, or seclusion, with a*
6 *separate record provided for each type of restraint and seclusion.*

7 (5) *The race or ethnicity and sex of nondisabled pupils subjected*
8 *to physical restraint, mechanical restraint, or seclusion, with a*
9 *separate record provided for each type of restraint and seclusion.*

10 (6) *The number of instances of physical restraint of IDEA pupils,*
11 *Section 504 pupils, and nondisabled pupils, with a separate number*
12 *provided for each type of pupil.*

13 (7) *The number of instances of mechanical restraint of IDEA*
14 *pupils, Section 504 pupils, and nondisabled pupils, with a separate*
15 *number provided for each type of pupil.*

16 (8) *The number of instances of seclusion of IDEA pupils, Section*
17 *504 pupils, and nondisabled pupils, with a separate number*
18 *provided for each type of pupil.*

19 SEC. 2. *It is the intent of the Legislature that the data collection*
20 *and reporting requirements contained in this act be conducted in*
21 *compliance with the requirements of the Civil Rights Data*
22 *Collection of the United States Department of Education's Office*
23 *for Civil Rights imposed pursuant to Sections 100.6(b) and 104.61*
24 *of Title 34 of the Code of Federal Regulations, and impose no new*
25 *duties or higher level of service on local educational agencies.*

26 SEC. 3. *No reimbursement is required by this act pursuant to*
27 *Section 6 of Article XIII B of the California Constitution for certain*
28 *costs that may be incurred by a local agency or school district*
29 *because in that regard this act implements a federal law or*
30 *regulation and results only in costs mandated by the federal*
31 *government, within the meaning of Section 17556 of the*
32 *Government Code.*

33 *However, if the Commission on State Mandates determines that*
34 *this act contains costs mandated by the state, reimbursement to*
35 *local agencies and school districts for those costs shall be made*
36 *pursuant to Part 7 (commencing with Section 17500) of Division*
37 *4 of Title 2 of the Government Code.*

38 ~~SECTION 1.—Section 32282 of the Education Code is amended~~
39 ~~to read:~~

1 ~~32282. (a) The comprehensive school safety plan shall include,~~
2 ~~but not be limited to, both of the following:~~

3 ~~(1) Assessing the current status of school crime committed on~~
4 ~~school campuses and at school-related functions.~~

5 ~~(2) Identifying appropriate strategies and programs that will~~
6 ~~provide or maintain a high level of school safety and address the~~
7 ~~school's procedures for complying with existing laws related to~~
8 ~~school safety, which shall include the development of all of the~~
9 ~~following:~~

10 ~~(A) Child abuse reporting procedures consistent with Article~~
11 ~~2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of~~
12 ~~Part 4 of the Penal Code.~~

13 ~~(B) Disaster procedures, routine and emergency, including~~
14 ~~adaptations for pupils with disabilities in accordance with the~~
15 ~~Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101~~
16 ~~et seq.). The disaster procedures shall also include, but not be~~
17 ~~limited to, both of the following:~~

18 ~~(i) Establishing an earthquake emergency procedure system in~~
19 ~~every public school building having an occupant capacity of 50~~
20 ~~or more pupils or more than one classroom. A district or county~~
21 ~~office may work with the California Emergency Management~~
22 ~~Agency and the Seismic Safety Commission to develop and~~
23 ~~establish the earthquake emergency procedure system. The system~~
24 ~~shall include, but not be limited to, all of the following:~~

25 ~~(I) A school building disaster plan, ready for implementation~~
26 ~~at any time, for maintaining the safety and care of pupils and staff.~~

27 ~~(II) A drop procedure whereby each pupil and staff member~~
28 ~~takes cover under a table or desk, dropping to his or her knees,~~
29 ~~with the head protected by the arms, and the back to the windows.~~
30 ~~A drop procedure practice shall be held at least once each school~~
31 ~~quarter in elementary schools and at least once a semester in~~
32 ~~secondary schools.~~

33 ~~(III) Protective measures to be taken before, during, and~~
34 ~~following an earthquake.~~

35 ~~(IV) A program to ensure that pupils and both the certificated~~
36 ~~and classified staff are aware of, and properly trained in, the~~
37 ~~earthquake emergency procedure system.~~

38 ~~(ii) Establishing a procedure to allow a public agency or~~
39 ~~nonprofit organization, including the American Red Cross, to use~~
40 ~~school buildings, grounds, and equipment for mass care and welfare~~

1 shelters during disasters or other emergencies affecting the public
2 health and welfare. The district or county office shall cooperate
3 with the public agency or nonprofit organization in furnishing and
4 maintaining the services as the district or county office may deem
5 necessary to meet the needs of the community.

6 (C) Policies pursuant to subdivision (d) of Section 48915 for
7 pupils who committed an act listed in subdivision (c) of Section
8 48915 and other school-designated serious acts which would lead
9 to suspension, expulsion, or mandatory expulsion recommendations
10 pursuant to Article 1 (commencing with Section 48900) of Chapter
11 6 of Part 27 of Division 4 of Title 2.

12 (D) Procedures to notify teachers of dangerous pupils pursuant
13 to Section 49079.

14 (E) A discrimination and harassment policy consistent with the
15 prohibition against discrimination contained in Chapter 2
16 (commencing with Section 200) of Part 1.

17 (F) The provisions of any schoolwide dress code, pursuant to
18 Section 35183, that prohibits pupils from wearing “gang-related
19 apparel,” if the school has adopted that type of dress code. For
20 those purposes, the comprehensive school safety plan shall define
21 “gang-related apparel.” The definition shall be limited to apparel
22 that, if worn or displayed on a school campus, reasonably could
23 be determined to threaten the health and safety of the school
24 environment. Any schoolwide dress code established pursuant to
25 this section and Section 35183 shall be enforced on the school
26 campus and at any school-sponsored activity by the principal of
27 the school or the person designated by the principal. For the
28 purposes of this paragraph, “gang-related apparel” shall not be
29 considered a protected form of speech pursuant to Section 48950.

30 (G) Procedures for safe ingress and egress of pupils, parents,
31 and school employees to and from school.

32 (H) A safe and orderly environment conducive to learning at
33 the school.

34 (I) The rules and procedures on school discipline adopted
35 pursuant to Sections 35291 and 35291.5.

36 (J) Hate crime reporting procedures pursuant to Chapter 1.2
37 (commencing with Section 628) of Title 15 of Part 1 of the Penal
38 Code.

39 (b) The comprehensive school safety plan may include the rules
40 and procedures regarding the use of restraint and seclusion pursuant

1 to Article 5.2 (commencing with Section 49005) of Chapter 6 of
2 Part 27 of Division 4 of Title 2.

3 (e) ~~It is the intent of the Legislature that schools develop~~
4 ~~comprehensive school safety plans using existing resources,~~
5 ~~including the materials and services of the partnership, pursuant~~
6 ~~to this chapter. It is also the intent of the Legislature that schools~~
7 ~~use the handbook developed and distributed by the School/Law~~
8 ~~Enforcement Partnership Program entitled “Safe Schools: A~~
9 ~~Planning Guide for Action” in conjunction with developing their~~
10 ~~plan for school safety.~~

11 (d) ~~Grants to assist schools in implementing their comprehensive~~
12 ~~school safety plan shall be made available through the partnership~~
13 ~~as authorized by Section 32285.~~

14 (e) ~~Each schoolsite council or school safety planning committee~~
15 ~~in developing and updating a comprehensive school safety plan~~
16 ~~shall, where practical, consult, cooperate, and coordinate with~~
17 ~~other schoolsite councils or school safety planning committees.~~

18 (f) ~~The comprehensive school safety plan may be evaluated and~~
19 ~~amended, as needed, by the school safety planning committee, but~~
20 ~~shall be evaluated at least once a year, to ensure that the~~
21 ~~comprehensive school safety plan is properly implemented. An~~
22 ~~updated file of all safety-related plans and materials shall be readily~~
23 ~~available for inspection by the public.~~

24 (g) ~~The comprehensive school safety plan, as written and~~
25 ~~updated by the schoolsite council or school safety planning~~
26 ~~committee, shall be submitted for approval under subdivision (a)~~
27 ~~of Section 32288.~~

28 SEC. 2. ~~Article 5.2 (commencing with Section 49005) is added~~
29 ~~to Chapter 6 of Part 27 of Division 4 of Title 2 of the Education~~
30 ~~Code, to read:~~

31
32 ~~Article 5.2. Restraint and Seclusion~~
33

34 ~~49005. The Legislature finds and declares all of the following:~~

35 (a) ~~Seclusion and restraint may cause trauma and injury to both~~
36 ~~the individual subjected to these techniques and the personnel~~
37 ~~executing them.~~

38 (b) ~~Interventions using seclusion and restraint when a pupil~~
39 ~~poses an imminent risk of serious physical harm to self or others~~

1 are not therapeutic or educational. Their use does not positively
2 change behavior and is limited to emergency interventions.

3 49005.1. For purposes of this article, the following definitions
4 apply:

5 (a) “Chemical restraint” means the administration of a drug or
6 medication to manage a pupil’s behavior or restrict a pupil’s
7 freedom of movement that is not a standard treatment and dosage
8 for the pupil’s medical or psychiatric condition.

9 (b) “Department” means the State Department of Education.

10 (c) (1) “Educational provider” means an entity or a person that
11 does both of the following:

12 (A) Receives support in any form from a program supported in
13 whole or in part with funds appropriated by the department.

14 (B) Provides educational or related services, support, or other
15 assistance to individuals in a public or private elementary or
16 secondary school.

17 (2) Educational provider includes all local educational agencies,
18 including charter schools, the California School for the Deaf, the
19 California School for the Blind, nonpublic schools, and nonpublic
20 agencies, including both in-state and out-of-state nonpublic schools
21 and nonpublic agencies.

22 (d) “Mechanical restraint” means the use of a mechanical device,
23 material, or equipment attached or adjacent to the pupil’s body
24 that he or she cannot easily remove that restricts the freedom of
25 movement of all or part of a pupil’s body, or restricts normal access
26 to the pupil’s body. Mechanical restraint does not include
27 mechanical devices, material, or equipment used for postural
28 support, during transportation, or used to improve the mobility
29 and independent functioning of a pupil rather than to restrict
30 movement.

31 (e) “Physical restraint” means the use of a manual hold to restrict
32 freedom of movement of all or part of a pupil’s body, or to restrict
33 normal access to the pupil’s body. Physical restraint is a
34 staff-to-pupil physical contact in which the pupil unwillingly
35 participates. Physical restraint does not include briefly holding a
36 pupil without undue force in order to calm or comfort, or to prevent
37 unsafe behavior, such as running into traffic or engaging in a
38 physical altercation, or physical contact intended to gently assist
39 or prompt a pupil in performing a task or to guide or assist a pupil
40 from one area to another.

1 (f) ~~“Seclusion” means the involuntary confinement of a pupil~~
2 ~~alone in a room or area, which the pupil is physically prevented~~
3 ~~from leaving. “Seclusion” does not mean a supervised timeout, in~~
4 ~~which an adult is continuously present in the room with the pupil.~~

5 ~~49005.2. An educational provider shall not use seclusion,~~
6 ~~chemical restraint, mechanical restraint, or physical restraint for~~
7 ~~the purpose of coercion, discipline, convenience, or retaliation by~~
8 ~~staff of the educational provider.~~

9 ~~49005.3. (a) An educational provider shall not use any of the~~
10 ~~following:~~

11 ~~(1) A physical restraint technique that obstructs a pupil’s~~
12 ~~respiratory airway or impairs the pupil’s breathing or respiratory~~
13 ~~capacity, including techniques in which a staff member places~~
14 ~~pressure on a pupil’s back or places his or her body weight against~~
15 ~~the pupil’s torso or back.~~

16 ~~(2) A pillow, blanket, or other item covering the pupil’s face as~~
17 ~~part of a physical restraint.~~

18 ~~(3) An improvised restraint device, such as a sheet or belt.~~

19 ~~(4) A physical restraint on a pupil who has a known medical,~~
20 ~~psychological, or physical condition, and where there is reason to~~
21 ~~believe that the use would endanger the pupil’s life or seriously~~
22 ~~exacerbate the medical, psychological, or physical condition of~~
23 ~~the pupil. Known risk factors include a history of trauma or abuse,~~
24 ~~obesity, agitated or excited syndromes, preexisting heart disease,~~
25 ~~and respiratory conditions, including bronchitis or asthma.~~

26 ~~(5) Placement of a pupil in a facedown position with the pupil’s~~
27 ~~hands held or restrained behind his or her back.~~

28 ~~(6) Physical restraint as an extended procedure beyond the~~
29 ~~immediate emergency.~~

30 ~~(b) An educational provider shall avoid the use of prone restraint~~
31 ~~techniques whenever possible.~~

32 ~~(c) An educational provider may use physical restraint in an~~
33 ~~emergency situation if all of the following conditions are met,~~
34 ~~unless otherwise stated in a pupil’s individualized education~~
35 ~~program and approved behavioral intervention plan:~~

36 ~~(1) Physical restraint is required to prevent imminent serious~~
37 ~~physical harm to the pupil, staff, or others.~~

38 ~~(2) The educational provider has determined that less restrictive~~
39 ~~alternatives are ineffective.~~

1 ~~(3) Physical restraint is not employed for longer or with more~~
2 ~~force than is necessary to prevent the imminent serious physical~~
3 ~~harm.~~

4 ~~(4) A staff member is continuously present and keeps the pupil~~
5 ~~under constant face-to-face observation for signs of distress or~~
6 ~~difficulty breathing.~~

7 ~~(5) The staff member applying the restraint is trained in~~
8 ~~emergency interventions, including the use of physical restraint,~~
9 ~~and applies the techniques consistent with district-approved~~
10 ~~procedures or training.~~

11 ~~(d) An educational provider may use physical restraint as a~~
12 ~~component of a pupil's behavioral intervention plan if all of the~~
13 ~~following conditions are met:~~

14 ~~(1) The behavioral intervention plan has been developed and~~
15 ~~approved by the pupil's individualized education program team~~
16 ~~following a functional analysis assessment pursuant to regulation.~~

17 ~~(2) Physical restraint is required to prevent a targeted and~~
18 ~~imminent dangerous behavior that poses serious physical harm to~~
19 ~~the pupil, staff, or others.~~

20 ~~(3) Physical restraint is not to be employed for longer or with~~
21 ~~more force than is necessary to prevent the targeted dangerous~~
22 ~~behavior.~~

23 ~~(4) A staff member is continuously present and keeps the pupil~~
24 ~~under constant face-to-face observation for signs of distress or~~
25 ~~difficulty breathing.~~

26 ~~(5) The staff member applying the restraint is trained in~~
27 ~~implementation of the pupil's behavioral intervention plan,~~
28 ~~including the use of physical restraint, and applies the physical~~
29 ~~restraint consistent with district-approved procedures and training.~~

30 ~~(6) The individualized education program team reviews data~~
31 ~~regarding frequency of the targeted behavior and the use of physical~~
32 ~~restraint.~~

33 ~~(e) This section shall only apply to the use of physical restraint~~
34 ~~on individuals with exceptional needs, as defined in Section 56026,~~
35 ~~who receive special education and related services.~~

36 ~~49005.4. An educational provider shall not use chemical~~
37 ~~restraint, except as otherwise licensed to prescribe and administer~~
38 ~~medication.~~

39 ~~49005.5. An educational provider shall not use mechanical~~
40 ~~restraint.~~

1 ~~49005.6. (a) Beginning January 1, 2014, an educational~~
2 ~~provider shall not use seclusion.~~

3 ~~(b) Until January 1, 2014, an educational provider shall not use~~
4 ~~seclusion unless all of the following conditions are met:~~

5 ~~(1) The educational provider is a nonpublic, nonsectarian school,~~
6 ~~as defined in Section 56034, with intensive behavioral supports~~
7 ~~or a district-designated alternative program with intensive~~
8 ~~behavioral supports that is an alternative to a nonpublic,~~
9 ~~nonsectarian school.~~

10 ~~(2) The pupil placed in seclusion is an individual with~~
11 ~~exceptional needs, as defined in Section 56026, has a current~~
12 ~~individualized education program, and has the ability to understand~~
13 ~~the purpose of seclusion and the directives given by the school~~
14 ~~personnel regarding the seclusion.~~

15 ~~(3) The pupil has a behavioral intervention plan or interim~~
16 ~~behavioral intervention plan, while a functional analysis~~
17 ~~assessment, pursuant to Section 3052(b) of Title 5 of the California~~
18 ~~Code of Regulations, is being completed, and that plan takes into~~
19 ~~account a pupil's developmental level and individual history of~~
20 ~~trauma and abuse and includes the pupil's expressed preference~~
21 ~~of emergency intervention. The plan shall be reviewed after every~~
22 ~~incident of seclusion.~~

23 ~~(4) The pupil placed in seclusion exhibits behavior that poses~~
24 ~~an imminent risk of serious physical harm to school personnel, or~~
25 ~~is in a facility otherwise licensed or permitted by the state to use~~
26 ~~seclusion when the pupil poses an imminent risk of serious physical~~
27 ~~harm to school personnel or others, and the behavior cannot be~~
28 ~~addressed by a less restrictive intervention.~~

29 ~~(5) During the use of seclusion, a staff member, who is free~~
30 ~~from other responsibilities at the time, is continually present and~~
31 ~~keeps the pupil under constant direct visual observation. A pupil~~
32 ~~cannot be deprived of sleep, food, water, shelter, physical comfort,~~
33 ~~or access to bathroom facilities.~~

34 ~~(6) The period of seclusion shall not exceed 15 minutes except~~
35 ~~as indicated below:~~

36 ~~(A) A behavioral intervention case manager or, in the absence~~
37 ~~of the behavioral intervention case manager, a site administrator~~
38 ~~with training in behavioral intervention may approve continuation~~
39 ~~of seclusion for a total duration not to exceed 30 minutes for any~~
40 ~~one continuous seclusion event, after observing the pupil's behavior~~

1 while secluded and determining that the pupil continues to exhibit
2 behavior consistent with the conditions described in paragraph (4).

3 (B) A qualified mental health professional, as defined in Section
4 60020(j) of Title 2 of the California Code of Regulations, may
5 approve continuation of seclusion in a facility otherwise licensed
6 to use seclusion under Title 22 of the California Code of
7 Regulations for a total duration not to exceed 60 minutes for any
8 one continuous seclusion event, after observing the pupil's behavior
9 while secluded and determining that the pupil continues to exhibit
10 behavior consistent with the conditions described in paragraph (4).

11 (7) The seclusion room meets all of the following requirements:

12 (A) It is not used for another purpose, including use as a storage
13 room, bathroom, or utility room.

14 (B) It is not used without a fire clearance from the local fire
15 authority.

16 (C) It does not prevent exiting by the use of locking or jamming
17 devices, including devices that allow for immediate release upon
18 removal of a staff member's foot, hand, or body from a magnetic
19 engagement pad or button, unless in a facility otherwise licensed
20 or permitted by state law to use a locked room.

21 (D) It is safe and free of hazards, including objects or fixtures
22 that can be broken or used by a pupil to inflict injury.

23 49005.7. (a) It is the intent of the Legislature that, except where
24 this article may grant more protections, this article shall be
25 interpreted as being consistent with Chapter 5.5 (commencing with
26 Section 56520) of Part 30 and its implementing regulations
27 commencing with Section 3052 of Title 5 of the California Code
28 of Regulations.

29 (b) It is also the intent of the Legislature to monitor the
30 implementation of this article and to encourage stakeholders,
31 including, but not limited to, disability rights advocacy groups,
32 representatives of education providers, and education organizations
33 to voluntarily make recommendations for future legislation and
34 budget augmentations on the topic of seclusion and restraint.

35 49005.8. The department is authorized to use funds received
36 for training pursuant to the federal Individuals with Disabilities
37 Education Act (20 U.S.C. Sec. 1400 et seq.) to provide professional
38 and education support staff who work with pupils with exceptional
39 needs and pupils receiving special education services professionally

- 1 ~~recognized or accepted training in evidence-based emergency~~
- 2 ~~interventions.~~

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